

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**IN RE:**

**July 3, 2003**

**NOTIFICATION ABOUT THE TRANSFER OF ASSETS  
AND CUSTOMERS OF BROADWING  
COMMUNICATIONS SERVICES INC. AND BROADWING  
TELECOMMUNICATIONS INC. TO C III  
COMMUNICATIONS OPERATIONS, LLC**

**DOCKET NO.  
03-00240**

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**ORDER APPROVING TRANSFER OF AUTHORITY  
AND CUSTOMER NOTIFICATION LETTER**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on May 12, 2003, for consideration of the *Notification about the Transfer of Assets and Customers* (the "*Notification*") submitted by Broadwing Communications Services Inc. ("Broadwing-CSI") and Broadwing Telecommunications Inc. ("Broadwing-TI" and jointly "Broadwing") and C III Communications Operations, LLC ("C III Ops" and collectively the "Parties").

**Statutory/Regulatory Framework**

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain TRA approval to transfer its authority to provide utility services (also known as a "certificate of public convenience and necessity" or "CCN"). Tenn. Code Ann. § 65-4-113(a) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) includes the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

When a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) requires the following procedure:

(d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:

. . .

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-

.56(2)(d)(2) shall inform the customer of this provision.

4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4- 2-.56(2)(d)(2) shall inform the customer of this provision.

### **The Notification**

In the *Notification*, filed with the TRA on March 27, 2003, the Parties outline the plans for C III Ops' acquisition of Broadwing's broadband business, including intrastate and interstate long distance and private line services, pursuant to a purchase agreement executed on February 22, 2003. The assets to be acquired include Broadwing's CCNs to provide intrastate interexchange telecommunications services in Tennessee, as well as approximately 3019 of its customer accounts.<sup>1</sup> Pursuant to this proposed transaction, the Parties are seeking the TRA's approval of the transfer of CCNs and the customer notice letter concerning the transfer of customer base from Broadwing to C III Ops.

C III Ops is a wholly-owned subsidiary of C III Communications, LLC ("C III"). The majority and controlling owner of C III is Corvis Corporation ("Corvis"), a publicly traded corporation specializing in optical network solutions.<sup>2</sup> Upon completion of the transaction, it is anticipated that the technical personnel and core management team of Broadwing will be transferred to C III Ops, which will then adopt the name Broadwing, LLC. Thereafter, Corvis is prepared to invest up to \$50 million in the new venture,

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<sup>1</sup> On March 25, 2003, C III Ops filed an application for a CCN with the TRA to be considered in conjunction with the *Notification* at issue in this docket. On April 17, 2003, C III Ops withdrew its CCN application and expressed an intention to acquire Broadwing-CSI's CCN granted by the TRA on October 13, 1995 in Docket No. 95-03221. C III Ops also expressed an intent to acquire the CCN of Broadwing-TI, granted by the TRA on August 2, 1995, in Docket No. 95-02659, if necessary to provide both resold and facilities-based intrastate interexchange telecommunications services in Tennessee.

<sup>2</sup> None of these companies currently possess any authority to provide telecommunications services in the State of Tennessee.

thereby enhancing the financial capabilities of the company.

According to the *Notification*, the transfer will be virtually seamless to Broadwing customers. Following completion of the transfer, Broadwing customers will continue to receive the same service, without interruption, under the same terms and conditions. Except for a slight change in the corporate name, customer invoices will be identical as will be company contact names and addresses. Because C III Ops is also acquiring Broadwing's Carrier Identification Codes, there will be no need to change any customer's Presubscribed Interexchange Carrier.

A customer notification letter will be sent to the customers of Broadwing to advise them of this transaction. TRA Rule 1220-4-2-.56(2)(d) provides that, in case of a transfer of customer base from one telecommunications service provider to another, the TRA may deem that the provider whose customer base is being acquired has met the notification requirements of the TRA's anti-slamming rules by sending a letter to its affected customers notifying them of the change in provider. This rule requires TRA approval of the letter and, by implication, of the transfer of customer base. Broadwing's proposed customer notice letter will be sent jointly by both companies with the names of Broadwing Telecommunications, Inc. and C III Communications Operations, LLC included on the letterhead, and the transfer will occur following compliance with the thirty-day notice requirement.

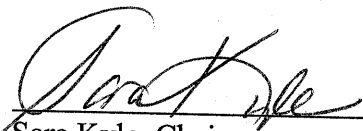
#### **The May 12, 2003 Authority Conference**

At the May 12, 2003 Authority Conference, the Directors voted unanimously to approve the transfer of CCNs and the customer notification letter with the following qualification: the letter should be modified in compliance with TRA Rule 1220-4-2-

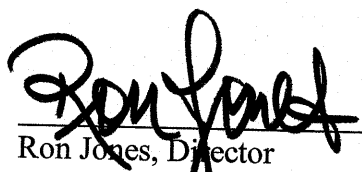
.56(2)(d)(4) to include a provision informing customers that a thirty-day notice of any rate increase occurring within 90 days following the transfer of the customer base will be provided. The Parties agreed to this modification.

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of customer base from Broadwing to C III Ops is approved.
2. The customer notification letter with the specified modification is approved.
3. The transfer of Broadwing's CCNs to C III Ops is approved.

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Ron Jones, Director